

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE BEXTRA AND CELEBREX MARKETING,
SALES PRACTICE, AND PRODUCT LIABILITY
LITIGATION

CASE NO. MDL No. 1699

MDL NO. 1699

This Document Relates to:

**~~PROPOSED~~ ORDER GRANTING
PFIZER DEFENDANTS' JOINT
MOTION SEEKING ORDER
DISMISSING PLAINTIFFS'
CLAIMS WITH PREJUDICE OR
OTHER APPROPRIATE
SANCTIONS**

(COMPLIANCE MOTION NO. 11)

Aalam, Elsie B.	07-1864 CRB
Aarts, Jacobus J.	07-1864 CRB
Ahmed, Muttasim G.	07-1868 CRB
Akin, Ray L.	07-1864 CRB
Akins, Willie M.	07-1868 CRB
Arbelaez, Carmen O. Uribe	07-1864 CRB
Archilla, Francisca Virella	07-1864 CRB
Asencio Rodriguez, Iris	07-1868 CRB
Banks, Sr., Walter T.	07-1868 CRB
Batiste, Frank D.	07-1869 CRB
Beal, Douglas L.	07-2315 CRB
Beal, Sr., Benjamin C.	07-1868 CRB
Beasley, Terry D.	07-1868 CRB
Beckham, Katherine	06-2870 CRB
Bell, Roger D.	07-1868 CRB
Bissonette, Kathryn A.	07-1868 CRB
Bobbitt, Steven	07-1868 CRB
Bossman, Alvin H.	07-1868 CRB
Bousum, Carl J.	07-1868 CRB
Brazle, Doris A.	07-1869 CRB
Broadway, Sarah	07-1956 CRB

Date: May 16, 2008
Time: 10:00 A.M.
Judge: Hon. Charles R. Breyer

1	Bryant, Tommy A.	07-1868 CRB)
	Bullard, Toby J.	07-1956 CRB)
2	Burroughs, Willie Inez	06-6078 CRB)
	Cable, Reba M.	07-1954 CRB)
3	Cabot, Larry L.	07-1868 CRB)
	Camacho, Iris Fernandez	07-1864 CRB)
4	Camacho, Margaret A.	07-1869 CRB)
	Carson, Ivory V.	07-1868 CRB)
5	Carter, Gary A.	06-5725 CRB)
	Carty, Darlene H.	07-1868 CRB)
6	Chadwick, Sadie V.	07-1868 CRB)
	Choate, Lannie R.	07-1868 CRB)
7	Clayburn, Ray W.	07-1869 CRB)
	Cogmon, Elijah J.	07-1868 CRB)
8	Coleman, Charles E.	07-1868 CRB)
	Colon Gonzalez, Aida	07-1868 CRB)
9	Counts, Tommy L.	07-1868 CRB)
	Cowans, Betty J.	07-1869 CRB)
10	Cox, Cecil D.	07-1864 CRB)
	Coyle, Sharon J.	07-1869 CRB)
11	Craig, Marilyn J.	07-1869 CRB)
	Creel, Elmer E.	05-4303 CRB)
12	Cross, Donnie M.	07-1868 CRB)
	Cross, Donnie M.	07-1869 CRB)
13	Cuevas, Josefina	07-1868 CRB)
	Curtis, Phillip D.	07-1868 CRB)
14	Dachs, Rosina M.	07-1869 CRB)
	Daley, Edward J.	07-1684 CRB)
15	Dao, Anh T.	06-5715 CRB)
	Davis, Darrell D.	07-1868 CRB)
16	Dewbre, Billye	06-6696 CRB)
	Diaz Velez, Miguel	07-1868 CRB)
17	Dishmon, Jannie M.	07-1868 CRB)
	Duncan, Charline M.	06-5982 CRB)
18	Dunham, Elsie J.	07-1954 CRB)
	Dunn, Ethel	07-1956 CRB)
19	Dunn, Lettie	07-1864 CRB)
	Durham, Robert	07-1868 CRB)
20	Echevarria Santiago, Vicente	07-1868 CRB)
	Eddings, Wayne	07-1868 CRB)
21	Farrel, Anthony L.	07-1868 CRB)
	Fassett, George E.	07-1954 CRB)
22	Finklea, Deborah E.	07-1869 CRB)
	Fitzell, Barbara E.	07-1868 CRB)
23)
24)
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26)
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28)

1	Flamm, Jerry W.	07-1868 CRB)
	Fletcher, Camille	06-2870 CRB)
2	Fontanez Mercado, Carlos C.	07-1868 CRB)
3	Funk, Charles W.	07-1869 CRB)
	Gentz, Tony	07-1956 CRB)
4	Gonzales, Timothy F.	07-1869 CRB)
5	Gray, Bertha L.	07-1864 CRB)
	Green, Jr., Manuel	07-1868 CRB)
6	Greer, Frances I.	07-1864 CRB)
	Gribble, III, James E.	07-1868 CRB)
7	Gutterson, Robert S.	07-1868 CRB)
8	Haley, Alma S.	07-1868 CRB)
	Hamilton-Graves, Phillis M.	07-1868 CRB)
9	Hawkins, Linda S.	06-5338 CRB)
10	Henry, Ralph J.	07-1869 CRB)
	Hill, Jr., Albert	07-1868 CRB)
11	Hill, Julia R.	07-1868 CRB)
	Hilliard, Johnney E.	07-1868 CRB)
12	Hinckley, Ellen S.	07-1869 CRB)
13	Hise, John R.	07-1868 CRB)
	Holden, Faith E.	07-1868 CRB)
14	Holland, Jacqueline D.	07-1864 CRB)
15	Horton, Brenda C.	07-1872 CRB)
	Howard, III, Robert A.	07-1868 CRB)
16	Howard, Patricia R.	07-1873 CRB)
	Howser, Caroline R.	07-1872 CRB)
17	Howze, Dorothy L.	07-1868 CRB)
18	Irons, Glenden	07-1868 CRB)
	Jackson, Jerald	07-1868 CRB)
19	James, Cheryl E.	07-1868 CRB)
20	Jenkins, Lorraine	06-0450 CRB)
	Jewell, Sandra	06-0442 CRB)
21	Jimenez Dicupe, Lucila	07-1868 CRB)
	Johnson, Barbara M.	07-1868 CRB)
22	Johnson, John A.	07-1873 CRB)
23	Johnson, Orlando S.	07-1868 CRB)
	Johnson-Allison, Gloria A.	07-1868 CRB)
24	Jones, Daisy M.	07-1869 CRB)
25	Jones, Frank	07-1864 CRB)
	Jones, Linda	07-1869 CRB)
26	Jones, Lorraine	07-1869 CRB)
	Kearney, Catherine A.	07-1868 CRB)
27	Kelly, Geraldine	07-1868 CRB)
28	Kelly, Ozzie L.	07-1868 CRB)

1	Kelmar, Mary M.	07-1868 CRB)
	Kimble, Bobbie	07-1868 CRB)
2	Kissee, Keith B.	07-1864 CRB)
3	Knight, Albert F.	07-1868 CRB)
	Koopman, Ervin F.	07-1864 CRB)
4	Lambert, Wilbert	07-1869 CRB)
5	Langley, Bradley M.	07-1868 CRB)
	Lasater, Glenna R.	07-1872 CRB)
6	Leach, Harry B.	07-1869 CRB)
	Lee, Dorothy M.	07-1864 CRB)
7	Lee, Ila M.	07-1868 CRB)
8	Lerma, Gloria	07-1907 CRB)
	Lincoln, Ruby	07-1869 CRB)
9	Lott, Jean M.	07-1864 CRB)
10	Lott, Jr., Jasper	07-1868 CRB)
	Lozano, Alicia Z.	07-1869 CRB)
11	Luque, Laurel E.	07-1869 CRB)
	Lyons-Hawking, Patricia	06-4119 CRB)
12	Maas, Maynard A.	07-1868 CRB)
13	Maestas, Julian E.	07-1868 CRB)
	Malone, Raymond J.	07-1869 CRB)
14	Martinez, Pamela A.	07-1868 CRB)
15	McDaniel, Curtis R.	07-1868 CRB)
	McGlothlin, Vernon	07-1864 CRB)
16	Merrell, MD, William S.	07-1868 CRB)
	Meyers, Claudia M.	07-1868 CRB)
17	Millemon, Brady B.	07-1869 CRB)
18	Minske, Ronald B.	07-1868 CRB)
	Molina, Edward T.	07-1868 CRB)
19	Molina, Ramon L.	07-1869 CRB)
20	Monteros, Marcelino E.	07-1868 CRB)
	Mooney, Mary J.	07-1868 CRB)
21	Moore, Bobbi N.	07-1868 CRB)
	Morgan, Belissa Ann	06-6076 CRB)
22	Morrow, Robert W.	07-1872 CRB)
23	Newhouse, Billy R.	07-1864 CRB)
	Nieves, Ana M.	07-1868 CRB)
24	Oates, Tom E.	07-1868 CRB)
25	Ojongtambia, Cyril M.	07-1868 CRB)
	Oquendo, Sr., Hector L.	07-1868 CRB)
26	Ortiz Lopez, Sylvia	07-1868 CRB)
	Parker, Vergia M.	07-1864 CRB)
27	Parnell, Julia Y.	07-1869 CRB)
28	Parnell, Michael J.	07-1868 CRB)

1	Parris, John H.	07-1869 CRB)
	Patillo, Wilton	07-1956 CRB)
2	Pavlosky, Olga	07-1864 CRB)
3	Pedroza, Victor R.	07-1868 CRB)
	Perez Sanchez, Jose A.	07-1868 CRB)
4	Perkins, Wayne A.	07-1872 CRB)
5	Phillips, Oscar L.	07-1868 CRB)
	Phinney, John M.	07-1868 CRB)
6	Pierson, Robert	06-6530 CRB)
	Pinkston, Shirley G.	07-1868 CRB)
7	Plummer, Pamela	06-0141 CRB)
8	Pool, Maggie	07-1868 CRB)
	Powers, Dorothy W.	07-1868 CRB)
9	Proctor, Lester L.	07-1907 CRB)
10	Prudence, Edward	07-1956 CRB)
	Quinones, William A.	07-1868 CRB)
11	Ramos Perez, Jose	07-1868 CRB)
	Ramos, Ines S.	07-1868 CRB)
12	Reed, Violet L.	07-1868 CRB)
13	Reel, Sarah M.	07-1864 CRB)
	Reliford, Charles M.	06-0464 CRB)
14	Revelle, Marilyn S.	07-1869 CRB)
15	Reyes, Anna D.	07-1868 CRB)
	Reynolds, Billie J.	07-1869 CRB)
16	Rhodes, Richard	05-4925 CRB)
	Ridenour, Jack L.	07-1868 CRB)
17	Risk, Ronald	06-5449 CRB)
18	Robertson, Martha M.	07-1868 CRB)
	Robertson, Vivian	07-1869 CRB)
19	Robinson, Annette	06-2870 CRB)
20	Robinson, Frankie M.	07-1864 CRB)
	Rodriguez Ramirez, Ferdinand	07-1868 CRB)
21	Rodriguez, Maria C.	07-1868 CRB)
	Rodriguez, Ruben	07-1868 CRB)
22	Ruch, Harold W.	06-6784 CRB)
23	Salamanca, Paquita P.	07-1868 CRB)
	Sanchez, Martha C.	07-1869 CRB)
24	Santiago Zayas, Virginia	07-1868 CRB)
25	Santiago, Lino	07-1868 CRB)
	Savage, Cordelia	07-1864 CRB)
26	Saxe, Lawrence I.	07-1868 CRB)
	Sayles, Tom	07-1869 CRB)
27	Schau, Kathleen E.	07-1869 CRB)
28	Schoen, Gwen	07-1956 CRB)

1	Sheppard, Betty J.	07-1868 CRB)
	Sheppard, Lyals R.	06-6055 CRB)
2	Short, Pauline R.	07-1868 CRB)
3	Sims, Ardella	07-1827 CRB)
	Smith, Joel	07-1956 CRB)
4	Smith, Nathaniel P.	07-1868 CRB)
5	Smith, Shirley U.	07-1868 CRB)
	Sobotka, John J.	07-1864 CRB)
6	Soliman, Andre	07-1869 CRB)
	Sorby, Pauline R.	07-1864 CRB)
7	Spencer, Lois G.	06-5972 CRB)
8	Spuhler, Betty F.	07-1868 CRB)
	Steele, Geneva Banks	07-1868 CRB)
9	Steele, Michael R.	07-1868 CRB)
10	Stevens, Ernest M.	07-1864 CRB)
	Stewart, Lydia M.	07-1869 CRB)
11	Stewart, Shirley A.	07-1956 CRB)
	Stinson, Thomas C.	07-1872 CRB)
12	Stokholm, Penny J.	07-1869 CRB)
13	Suggs, John A.	07-1864 CRB)
	Sutherlin III, George	06-6548 CRB)
14	Swanson, Ben C.	07-1868 CRB)
15	Talmadge, Joyce	07-1868 CRB)
	Tawyea, Marlene A.	07-1864 CRB)
16	Taylor, Sharon A.	07-1869 CRB)
	Templet, Therese A.	07-1868 CRB)
17	Tenney, Exie Brenda	07-1956 CRB)
18	Thebo, Cynthia J.	07-2313 CRB)
	Tift, Jennifer C.	07-1868 CRB)
19	Tillman, James	07-1868 CRB)
20	Toney, Ellie	07-1868 CRB)
	Torres Melendez, Vicenta	07-1868 CRB)
21	Torres, Edilma	07-1868 CRB)
	Tubbs, Leon	07-1868 CRB)
22	Tucker, Ester R.	07-1868 CRB)
23	Tucker, Richard L.	07-1868 CRB)
	Tyner, Dick R.	07-1868 CRB)
24	Tyson, Rosie	07-1869 CRB)
25	Uribe, Francisco	07-1869 CRB)
	Valentine, Ethel M.	07-1864 CRB)
26	Walker, Patricia A.	07-1868 CRB)
	Wall, Earnest C.	07-1872 CRB)
27	Walton, Douglas	07-1956 CRB)
28	Weatherby, Ella M.	07-1864 CRB)

1	West, Herman	07-1868 CRB)
	Whitby, Ashton C.	07-1868 CRB)
2	Whittemore, Kenneth L.	07-1868 CRB)
	Widmar, Charles J.	07-1864 CRB)
3	Wiley, Johnny	07-1868 CRB)
	Wilkinson, Gail V.	07-1868 CRB)
4	Williams, Burnic B.	07-2311 CRB)
	Williams, Earlene M.	07-1869 CRB)
5	Williams, Frannie Mae	07-1864 CRB)
	Williams, Martie	07-1868 CRB)
6	Wilson, Eloise	07-1868 CRB)
	Wilson, Gussie P.	07-1868 CRB)
7	Wiltjer, Robert J.	07-1868 CRB)
	Winnegan, Georgia T.	07-1868 CRB)
8	Woods, Joy	07-1869 CRB)
	Woods, Larry L.	07-1868 CRB)
9	Wortham-Waddy, Gwendolyn D.	07-1868 CRB)
	Wright, Patricia A.	07-1868 CRB)
10	Wyss, Lorraine	05-4924 CRB)
	Yates, Anthony W.	07-1869 CRB)
11	Young, Martha A.	07-1868 CRB)
	Zollicoffer, James	07-1868 CRB)

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1 THIS MATTER having come before the Court on the Pfizer Defendants' Expedited
2 Motion Seeking Order Dismissing Plaintiffs' Claims With Prejudice; the parties having received
3 due notice and having had the opportunity to be heard; and this Court having considered all
4 submissions made in support of and in opposition to the motion, finds as follows:

5 Plaintiffs listed in the caption to this Order have failed to comply with Pretrial Order
6 No. 6 ("PTO 6") by failing to provide defendants a completed Plaintiff Fact Sheet ("PFS")
7 without material deficiencies ("the discovery required by PTO 6"). Plaintiffs also have failed to
8 comply with the order issued by the Special Master, Judge Fern M. Smith (Ret.), on March 27,
9 2008, requiring plaintiffs to provide the discovery required by PTO 6 within twenty-one days of
10 entry of that Order or face dismissal with prejudice ("the compliance order"). The plaintiffs'
11 failure is particularly egregious given the numerous efforts the Court and the parties have made
12 to provide notice of plaintiffs' discovery obligations. (*See* Pfizer Defs.' Mem. of P. & A. in
13 Supp. of Mot., at 2-6; Declaration of Stuart M. Gordon in Supp. of Pfizer Defendants' Mot. to
14 Dismiss, ¶¶ 3-20.)

15 Based on these failures, the Court also finds as follows:

16 (1) The public's interest in expeditious resolution of this litigation is compromised by
17 the plaintiffs' failure to comply with PTO 6 and the Special Master's compliance order. This
18 Court and the public have an overriding interest in securing the just, speedy, and inexpensive
19 determination of every action. Plaintiffs' delay is unreasonable and has impeded the resolution
20 of these matters.

21 (2) The Court's need to manage its docket is compromised by the plaintiffs' failure to
22 comply with PTO 6 and the Special Master's compliance order. The Court cannot effectively
23 move forward with the cases in which plaintiffs have provided the required discovery when other
24 plaintiffs have failed to do so. Dismissal of these plaintiffs will serve to appropriately penalize
25 these plaintiffs for their non-compliance and also will encourage other plaintiffs to comply with
26 this Court's case management orders.

27 (3) Defendants are prejudiced by the plaintiffs' failure to comply with PTO 6 and the
28 Special Master's compliance order. Without the discovery required by PTO 6, the Pfizer

1 Defendants cannot defend themselves because they have no information about the individual
2 plaintiffs or the plaintiffs' injuries outside the allegations of the complaint. The defendants are
3 also prejudiced by the loss of evidence and memory that attend the delay in providing required
4 discovery, factors that are aggravated by the complexity of this litigation.

5 (4) The public policy favoring disposition on the merits is overridden by plaintiffs'
6 failure to comply with PTO 6 and the Special Master's compliance order. The Court finds that
7 plaintiffs' failure to provide the required discovery obstructs resolution of their claims on the
8 merits. A case that is stalled or unreasonably delayed by a party's failure to comply with
9 deadlines and discovery obligations cannot move forward toward resolution on the merits.
10 Accordingly, this dismissal factor does not weigh in favor of plaintiffs at all.

11 (5) There are no less drastic sanctions available to force the plaintiffs to comply with
12 this Court's orders. The Court finds that PTO 6 and the Special Master's compliance order both
13 provide specific warnings stating that claims may be dismissed with prejudice for failure to
14 comply with discovery obligations. The Court also finds that Plaintiffs received warning letters
15 from Defendants that prompted no response.

16 Accordingly, after weighing the dismissal factors discussed in *Malone v. U.S. Postal*
17 *Serv.*, 833 F.2d 128, 130 (9th Cir. 1987), and *In re Phenylpropanolamine (PPA) Prods. Liab.*
18 *Litig.*, 460 F.3d 1217 (9th Cir. 2006), and in light of this Court's role in overseeing this
19 multidistrict litigation, the Court hereby finds that dismissal of these plaintiffs' claims with
20 prejudice is warranted.

1 THEREFORE, IT IS HEREBY ORDERED THAT the Pfizer Defendants' Expedited
2 Motion is GRANTED and the claims of the plaintiffs listed in this caption are DISMISSED
3 WITH PREJUDICE.

4 **IT IS SO ORDERED.**

5 Dated: May 16, 2008



HONORABLE CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE